

AMENDED IN SENATE APRIL 18, 2013

SENATE BILL

No. 425

Introduced by Senator DeSaulnier
(~~Coauthor: Senator~~ *Coauthors: Senators Gaines and Liu*)

February 21, 2013

An act to ~~add Section 87202.1 to, and to add Chapter 11 (commencing with Section 8847) to Division 1 of Title 2 of, of the Government Code,~~ relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 425, as amended, DeSaulnier. Public works: the Public Works Peer Review Act of 2013.

Existing law defines a public work as construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public ~~funds, funds~~; work done for irrigation, utility, reclamation, and improvement districts, and other districts of this ~~type, type~~; street, sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the ~~state, state~~; or of any political subdivision or district thereof, and public transportation demonstration projects, as specified.

This bill would require a ~~state agency or department or a regional or local~~ *public* agency, principally tasked with administering the planning ~~and, development, and operation of a public works~~ project, to establish a specified peer review group, to provide it with expert advice on the scientific and technical aspects of the project if the public works is a megaproject, defined as having total development, construction, and reasonable projected maintenance costs exceeding ~~one billion dollars~~ \$1,000,000,000; if the Governor or the head of the administering agency

has determined that the establishment of a peer review group is in the public interest in connection with the development and construction of the project; or if a statute or concurrent resolution is passed by the Legislature requiring the administering agency to do so. The bill would prohibit a peer review group from meeting or taking any action until a charter is filed with the head of the administering agency and the relevant standing committees of the Legislature and is posted on the administering agency's Internet Web site, stating the group's objective, the scope of its activities, and a description of the duties for which the group is responsible, among other things.

Existing law, the Political Reform Act of 1974, prohibits a public official at any level of state or local government from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which he or she knows, or has reason to know, he or she has a financial interest. A violation of the act is a crime.

This bill would require a member of a peer review group, within 30 days of joining the group, to file specified forms with the Fair Political Practices Commission, under penalty of perjury, stating his or her economic interests, and declaring himself or herself to be independent of all parties involved in the project and to have no conflicts of interest.

Because the bill would expand the definition of a crime under the act, it would impose a state-mandated local program.

~~The bill would also require the Fair Political Practices Commission to create a form that identifies potential institutional conflicts for members of peer review groups, and requires a member of a peer review group to declare, under penalty of perjury, to be independent of all parties involved in the project, including project sponsors or contractors, and to have no conflicts of interest.~~

Existing constitutional provisions require that a statute that limits the right of access to public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 11 (commencing with Section 8847) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 11. THE PUBLIC WORKS PROJECT PEER REVIEW ACT
OF 2013

8847. This chapter shall be known and may be cited as the Public Works Project Peer Review Act of 2013.

8847.1. For purposes of this chapter, the following terms have the following meanings, unless expressly stated otherwise:

(a) "Administering agency" means ~~either a state agency or department or a regional or local agency~~ a public agency, excluding an "exempt agency" principally tasked with administering the planning and, development, and operation of a public works project.

(b) "Auditor" means the Bureau of State Audits.

(c) "Conflict of interest" means a reviewer or a relative or professional associate of the reviewer has a financial or other interest in a project or with a project sponsor that is known to the reviewer and is likely to bias the reviewer's evaluation of that project. A reviewer has a conflict of interest if ~~he or she~~ any of the following apply to him or her or to a close relative or professional associate of the reviewer and any of the following also apply:

(1) He or she has received or could receive a direct financial benefit of any amount deriving from a project sponsor or any contractor connected to the project under review.

(2) Apart from any direct financial benefit deriving from a project sponsor or contractor connected to the project under review, he or she has received or could receive an indirect financial benefit from a project sponsor or contractor that in the aggregate exceeds ten thousand dollars (\$10,000) per year, including honoraria, fees, stock or other financial benefit, and the current value of the reviewer's already existing stock holdings.

(3) He or she has the appearance of a conflict of interest that would cause a reasonable person to question the reviewer's impartiality if he or she were to participate in the review.

(4) He or she has any other interest in the project, project sponsor, or any connected contractor that, in the view of a reasonable person, is likely to bias the reviewer's evaluation of that project.

(d) *"Exempt agency" means the California Water Commission, California Department of Water Resources, or any state, regional, or local public entity or district engaged in storing, supplying, transporting, distributing, or delivering water.*

~~(d)~~

~~(e) "Megaproject" means a project as defined in Section 1720 of the Labor Code with total development, construction, and reasonable projected maintenance costs exceeding one billion dollars (\$1,000,000,000).~~

~~(e)~~

(f) "Peer review group" means a group of persons qualified by training and experience in particular scientific or technical fields, or as authorities knowledgeable in the various disciplines and fields related to the public works project under review, who give expert advice on the scientific and technical aspects of the project as described in this chapter.

~~(f)~~

(g) "Project" means a public works project as public works is defined in Section 1720 of the Labor Code *that will be owned by a public agency, excluding an exempt agency.*

~~(g)~~

(h) "Project sponsor" means ~~any entity~~ *public agency* that funds a project, including a federal, state, local, or other entity, or the administering agency.

8848. (a) The administering agency of a project shall establish a peer review group if any of the following circumstances apply:

1 (1) The project is a megaproject.

2 (2) The Governor, or the head of the administering agency
3 involved, has determined that the establishment of a peer review
4 group is in the public interest in connection with the development
5 and construction of a project.

6 (3) A statute or concurrent resolution is passed by the Legislature
7 requiring the administering agency to establish a peer review group.

8 (b) Unless otherwise provided in statute, an administering
9 agency shall not establish a peer review group other than under
10 the provisions of this chapter.

11 8849. (a) A peer review group shall not meet or take any action
12 until a charter has been written by the administering agency and
13 filed with the relevant standing committees of the Legislature. The
14 charter also shall be posted on the administering agency's Internet
15 Web site and shall contain all of the following information:

16 (1) The group's official name or designation.

17 (2) The group's objective and the scope of its activities.

18 (3) A statement of the expertise and balance of interests required
19 of the group membership to perform its charge.

20 (4) The name of the administering agency and official to whom
21 the group reports.

22 (5) A description of the duties for which the group is responsible.

23 (6) The estimated number and frequency of group meetings.

24 (7) The estimated annual operating costs for the group.

25 (b) Before establishing a peer review group, an administering
26 agency shall develop a transparent process for selecting members
27 of the group. The auditor shall review the process by which the
28 administering agency comprised the peer review group, to warrant
29 that the process was followed.

30 (c) *The administering agency shall enter into a contract with*
31 *each of the peer review group members that requires each member*
32 *to do all of the following:*

33 (1) *File the Statement of Economic Interest, Form 700, with the*
34 *Fair Political Practices Commission.*

35 (2) *Commit, upon penalty of perjury, to comply with the conflict*
36 *of interest requirements of this chapter.*

37 8850. Components of megaprojects that must be evaluated by
38 a peer review group include, but are not limited to, the following:

39 (a) Project demand studies.

40 (b) Design and engineering models and estimates.

1 (c) Construction, testing, and inspection practices.

2 8851. All of the following shall apply to members of a peer
3 review group:

4 (a) A member shall, within 30 days of joining the group, file
5 the statements required under Sections 87202 and 87202.1, under
6 penalty of perjury, stating his or her economic interests, and
7 declaring himself or herself to be independent of all parties
8 involved in the project and to have no conflicts of interest.

9 (b) A member shall be reimbursed only for actual expenses, for
10 example, transportation and room and board costs, plus one
11 hundred dollars (\$100) per day he or she performs work in the
12 review.

13 (c) A member shall have some expertise involving the work to
14 be reviewed, but need not be an expert in the specific field.

15 (d) If a member feels unable to provide objective advice, he or
16 she shall recuse ~~him~~ *himself* or herself from the peer review group.

17 8852. (a) All of the following shall apply to peer review group
18 meetings:

19 (1) An agenda and relevant documents; shall be posted on the
20 administering agency's Internet Web site at least one week before
21 the meeting.

22 (2) The meeting shall be held in a publicly accessible forum.

23 (3) The meeting shall contain a public participation component,
24 including presentations identifying specific issues to be discussed
25 or reviewed, and any other relevant presentations from the
26 administering agency.

27 (b) All documentation related to the issues to be reviewed at a
28 peer review group meeting, to the extent possible without putting
29 the administering agency at a negotiating disadvantage, shall be
30 made available to the public upon request.

31 (c) (1) In order to evaluate matters that relate to personnel,
32 design standards, contract amounts, or other issues that may put
33 the administering agency at a negotiating disadvantage, a meeting
34 of a peer review group subject to this act may be exempt in part
35 from the requirements of the Bagley-Keene Open Meeting Act
36 (Article 9 (commencing with Section 11120) of Division 3 of Title
37 2) 3), at the discretion of the head of the administering agency to
38 whom the peer review group reports, unless that meeting includes
39 participation by one or more full-time, or permanent part-time,
40 officers or employees of the administering agency.

(2) This section shall not preclude a full-time, or permanent part-time, officer or employee of the administering agency from supplying administrative support to a peer review group. Support staff shall not divulge the contents of a closed-door meeting. The head of the administering agency shall be responsible for ensuring compliance with Section 11228.

8853. This chapter shall not apply to the peer review group created pursuant to Section 185035 of the Public Utilities Code.

~~SEC. 2. Section 87202.1 is added to the Government Code, to read:~~

~~87202.1. The commission shall create a form, similar to a Form 700 statement of economic interests, that identifies potential institutional conflicts for members of peer review groups. The form shall require a member of a peer review group to declare, under penalty of perjury, to be independent of all parties involved in the project, including project sponsors or contractors, and to have no conflicts of interest, as defined in Section 8847.1.~~

~~SEC. 3.~~

SEC. 2. The Legislature finds and declares that this act imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following finding to demonstrate the interest protected by this limitation and the need for protecting the interest:

The public interest in nondisclosure pursuant to this act outweighs the public interest in disclosure, because requiring the public disclosure of the internal deliberations of peer review groups could impair the soundness of the group's evaluation and disadvantage the administering agency in contract negotiations.

~~SEC. 4.~~

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

1 However, if the Commission on State Mandates determines that
2 this act contains other costs mandated by the state, reimbursement
3 to local agencies and school districts for those costs shall be made
4 pursuant to Part 7 (commencing with Section 17500) of Division
5 4 of Title 2 of the Government Code.

6 ~~SEC. 5.~~

7 *SEC. 4.* The Legislature finds and declares that this bill furthers
8 the purposes of the Political Reform Act of 1974 within the
9 meaning of subdivision (a) of Section 81012 of the Government
10 Code.

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